

JUDGE GETTLEMAN'S TITLE VII AND §1981 MODEL JURY INSTRUCTIONS* **

* These are model instructions. Counsel may reserve their right to object to any of these or to suggest additional jury instructions per the court's standing order titled, "Final Pretrial Order, Selection of Jurors and Jury Instructions for Trials," which is available in chambers or online at: <http://www.ilnd.uscourts.gov/JUDGE/GETTLEMAN/rwgpage.htm>

** These model instructions are tailored for cases with claims for employment discrimination under Title VII of the Civil Rights Act of 1964 (as amended) and 42 U.S.C. Section 1981.

To use these instructions in a case with claims under Section 1981 only, references to sex-based or religion-based discrimination must be removed; Section 1981 covers discrimination based on a plaintiff's race and national origin only.

In cases having a Title VII claim but no Section 1981 claim, these instructions must be limited to only those damages defined as compensatory damages under 42 U.S.C. §1981a(b)(2); any other damages sought in Title VII cases, such as front or back pay, are to be determined by the Judge.

Now that you have heard all of the evidence and the argument of counsel, it becomes my duty to give you instructions concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply the law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Neither by these instructions, nor by any ruling or remark I have made, do I mean to indicate any opinion as to the facts or as to what your verdict should be. You are the sole judges of the facts.

Court's General Instruction No. 1

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in this case.

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair trial at your hands[, and a corporate entity/governmental entity such as defendant is entitled to the same fair trial as an individual.] The law respects all persons equally; all persons[, including such corporate/governmental entities,] stand equal before the law and are to be dealt with as equals in a court of justice.

Court's General Instruction No. 2

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term “evidence” includes sworn testimony of the witnesses, the exhibits admitted into evidence, and any stipulated facts. A stipulation is an agreed statement of facts between the parties, and you should regard such agreed statements as true. Any evidence to which I sustained an objection or that I ordered stricken must of course be disregarded. The only issues to be determined by you are those which I will set out in detail later in these instructions.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their respective sides of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding on you.

So while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

In determining any fact in issue you may consider the testimony of all witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

Court’s General Instruction No. 3

There are two types of evidence: direct and circumstantial. Direct evidence is the direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances that tend to show whether or not an asserted fact is true. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Court's General Instruction No. 4

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

Court's General Instruction No. 5

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness you should consider: the witness’s relationship to any of the parties; the witness’s interest, if any, in the outcome of the case; the witness’s manner of testifying; the witness’s opportunity to observe or acquire knowledge concerning the facts about which he or she testified; the witness’s candor, fairness and intelligence; and the extent to which the witness’s testimony has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary. The testimony of a single witness that produces in your minds a belief in the likelihood of its truth is sufficient for the proof of any fact, and would justify a verdict in accordance with such testimony, even though a number of witnesses may have testified to the contrary if, after consideration of all the evidence in the case, you hold greater belief in the accuracy and reliability of the one witness.

Similarly, the weight of the evidence is not necessarily determined by whether the evidence is in the form of a document or the oral testimony of a witness. It is for you to determine based upon the circumstances surrounding each document and each piece of testimony what weight to give to that evidence.

Court’s General Instruction No. 6

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters at issue in this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned during this trial.

Court's General Instruction No. 7

A witness may be discredited or “impeached” by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

If you believe that any witness has been so impeached, then it remains your exclusive province to give testimony of that witness such credibility or weight, if any, that you think it deserves.

Court’s General Instruction No. 8

When any witness is questioned about an earlier statement that the witness may have made, or earlier testimony that the witness may have given, such questioning is permitted in order to aid you in evaluating the truth or accuracy of the witness's testimony at the trial. In addition, if that earlier statement was made under oath and is inconsistent with the witness's testimony at the trial, you may consider that earlier sworn statement as evidence of the truth or accuracy of such earlier statement.

Whether or not such prior statements of a witness are, in fact, consistent or inconsistent with the witness's trial testimony is entirely for you to determine.

Court's General Instruction No. 9

The purpose of the attorneys' opening statements is to acquaint you in advance with the facts the attorneys expect the evidence to show. The purpose of the attorneys' closing arguments is to discuss the evidence actually presented. Opening statements, closing arguments and other statements of counsel should be disregarded to the extent that they are not supported by the evidence.

During the course of a trial it often becomes the duty of counsel to make objections and for me to rule on them in accordance with the law. The fact that either attorney made objections should not influence you in any way. Nor should the nature or manner of my ruling on any objection influence you in any way.

Whenever I have sustained an objection to a question addressed to a witness you must disregard the question entirely, and draw no inference from the wording of it, or speculate as to what the witness would have said if he or she had been permitted to answer the question. You should also disregard any answer the witness may have given prior to my ruling on the objection.

Court's General Instruction No. 10

The burden of proof in this case is by a preponderance of the evidence, which means that you must be persuaded, considering all of the evidence in the case, that the proposition on which the party has the burden of proof is more probably true than not true. When I say “if you find” or “if you decide,” I mean if you find or if you decide by a preponderance of the evidence.

Court’s General Instruction No. 11

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told him or her what he or she would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

Court's General Instruction No. 12

During the trial, certain testimony was presented to you by the reading of a deposition. This testimony is entitled to the same consideration you would give it had the witness personally appeared in court.

Court's General Instruction No. 13 (use only if depositions will be read at trial)

You have heard testimony of expert witnesses. This testimony is admissible where the subject matter involved requires knowledge, special study, training, or skill not within ordinary experience, and the witness is qualified to give an expert opinion.

However, the fact that an expert has given an opinion does not mean that it is binding on you or that you are obligated to accept the expert's opinion as to the facts. You should assess the weight to be given to the expert opinion in light of all the evidence in the case.

Court's General Instruction No. 14 (use only if an expert witness will testify)

When I use the expression “proximate cause” in these instructions, I mean any cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

Court’s General Instruction No. 15 (use only if applicable)

Plaintiff, [Name of Plaintiff] has brought [his/her] case against defendant, [Name of Defendant], on the basis of Title VII of the Civil Rights Act of 1964 (as amended), and 42 U.S.C. Section 1981. These statutes provide that it shall be unlawful for an employer to [terminate/refuse to hire/refuse to promote/demote] or otherwise discriminate against an employee with respect to the terms, conditions, or privileges of employment because of such individual's [race/sex/national origin/religion].

Court's Instruction Describing Title VII and §1981*

* If this instruction is used in a Section 1981 case that does not include a claim under Title VII, the reference to Title VII must be removed and only allegations of race and/or national origin discrimination may be included.

This instruction may be used in a case with only Title VII claims so long as the reference to Section 1981 is removed and the words "These statutes provide" are changed to "This statute provides."

For plaintiff to prevail against defendant on the plaintiff's claim of [race/sex/national origin/religion] discrimination under Title VII of the Civil Rights Act of 1964, and 42 U.S.C. Section 1981, [he/she] must prove the following elements by a preponderance of the evidence:

First, defendant [terminated/refused to hire/refused to promote/demoted] plaintiff; and

Second, plaintiff's [race/sex/national origin/religion] was a motivating factor in defendant's decision.

If plaintiff fails to prove either of the above elements by a preponderance of the evidence, your verdict must be for defendant, and you need not proceed further in considering this claim.

Court's Title VII and §1981 Elements Instruction*

* If this instruction is used in a Section 1981 case that does not include a claim under Title VII, the reference to Title VII must be removed and only allegations of race and/or national origin discrimination may be included.

This instruction may be used in a case with only Title VII claims so long as the reference to Section 1981 is removed.

If you find in favor of plaintiff and against defendant on both of the elements listed in the previous instruction (that is, you answer “Yes” to Question No. 1 on the verdict form), then you must answer Question No. 2 on the verdict form: Has defendant [Name of Defendant] proved by a preponderance of the evidence that it would not have [terminated/refused to hire/refused to promote/demoted] plaintiff [Name of Plaintiff] regardless of [his/her] [race/sex/national origin/religion]?

If you find in favor of plaintiff and against defendant and if you answer “No” in response to Question No. 2 on the verdict form, then you must award plaintiff such sum as you find by a preponderance of the evidence will fairly and justly compensate plaintiff for any damages you find plaintiff sustained as a direct result of defendant’s decision to [terminate/refuse to hire/refuse to promote/demote] plaintiff. These damages are called compensatory damages. The purpose of compensatory damages is to make the plaintiff whole—that is, to compensate plaintiff for the damages that plaintiff has suffered.

Court’s Title VII and §1981 General Compensatory Damages Instruction*

* If this instruction is used in a Section 1981 case that does not include a claim under Title VII, only allegations of race and/or national origin discrimination may be included.

In this case, plaintiff's claim for compensatory damages includes two distinct types of damages, which you must consider separately:

First is plaintiff's claim for lost wages. In deciding this claim, you must determine the difference between the amount of wages and fringe benefits plaintiff actually earned in [his/her] employment and the amount of wages and fringe benefits plaintiff would have earned if plaintiff had [been hired/not been fired/not been demoted/been promoted] by defendant on [start date], and remained in that position until [end date];

Second is plaintiff's claim for any damages other than lost wages sustained by plaintiff, such as damages for emotional harm and suffering.

You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

You may award compensatory damages only for injuries that plaintiff proves were proximately caused by defendant's wrongful conduct. The damages that you award must be fair compensation for all of plaintiff's damages—no more, no less. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize defendant. You should not award compensatory damages for speculative injuries, but only for those injuries that plaintiff has actually suffered or that plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. In order to be recoverable, damages must be actual, and neither speculative, remote, nor uncertain. On the other hand, mere difficulty in ascertaining the amount of damages is not fatal. The law does not require that a plaintiff prove the amount of loss with mathematical precision, but only with as much definiteness as circumstances permit.

Court's Title VII and §1981 Specific Compensatory Damages Instruction*

* If this instruction is used in a Title VII case that does not include a claim under Section 1981, only those damages defined as compensatory damages under 42 U.S.C. §1981a(b)(2) may be presented to the jury for consideration; any other damages sought, such as front or back pay, are to be presented to the Judge only.

You are also instructed that plaintiff has a duty under the law to mitigate [his/her] damages—that is, to exercise reasonable diligence under the circumstances to minimize [his/her] damages. Therefore, if you find by a preponderance of the evidence that plaintiff failed to seek out or take advantage of an opportunity to minimize damages that was reasonably available to [him/her], you must reduce plaintiff's damages by the amount [he/she] reasonably could have avoided if [he/she] had sought out or taken advantage of such an opportunity.

Court's Title VII and/or §1981 Mitigation Instruction (use only if applicable)

As I stated previously, If you find in favor of plaintiff and against defendant and if you answer “No” in response to Question No. 2 on the verdict form, you must award plaintiff the compensatory damages proven. In addition to compensatory damages, the law permits the jury to award additional damages to punish the defendant for extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct. These damages are called punitive damages. You may award punitive damages to plaintiff only if you find that defendant acted with malice or with reckless indifference to plaintiff’s federally protected rights (that is, you answer “Yes” to Question No. 5 on the verdict form). Defendant acts, or fails to act, with malice if it acts or fails to act with ill will or spite.

If you decide to award punitive damages, you must use sound reason in setting the amount of those damages; such an award must not reflect bias, prejudice or sympathy toward any party. However, the amount can be as large as you believe necessary to fulfill the purposes of punitive damages. You may consider the financial resources of the defendant in fixing the amount of punitive damages.

Court’s Title VII and/or §1981 Punitive Damages Instruction–OPTION A*

* Use this instruction in cases where punitive damages are sought and the defendant does not intend to present evidence that it made a good faith effort to attempt to comply with the law by adopting policies and procedures designed to prohibit discrimination in the workplace.

As I stated previously, if you find in favor of plaintiff and against defendant and if you answer “No” in response to Question No. 2 on the verdict form, you must award plaintiff the compensatory damages proven. In addition to compensatory damages, the law permits the jury to award additional damages to punish the defendant for extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct. These damages are called punitive damages. You may award punitive damages to plaintiff only if you find that defendant acted with malice or with reckless indifference to plaintiff’s federally protected rights (that is, you answer “Yes” to Question No. 5 on the verdict form). Defendant acts, or fails to act, with malice if it acts or fails to act with ill will or spite.

An employer may not be held liable for punitive damages because of discriminatory acts on the part of its managerial employees where those acts by such employees are contrary to the employer’s own good faith efforts to comply with the law by implementing policies and programs designed to prevent such unlawful discrimination in the workplace.

An award of punitive damages would be appropriate only if you find for plaintiff and then further find from a preponderance of the evidence (1) that a higher management official of defendant personally acted with malice or reckless indifference to plaintiff’s federally protected rights, and (2) that defendant itself did not make a good faith attempt to comply with the law by adopting policies and procedures designed to prohibit such discrimination in the workplace.

If you decide to award punitive damages, you must use sound reason in setting the amount of those damages; such an award must not reflect bias, prejudice or sympathy toward any party. However, the amount can be as large as you believe necessary to fulfill the purposes of punitive damages. You may consider the financial resources of the defendant in fixing the amount of punitive damages.

Court’s Title VII and/or §1981 Punitive Damages Instruction–OPTION B*

* Use this instruction in cases where punitive damages are sought and the defendant intends to present evidence that it made a good faith effort to attempt to comply with the law by adopting policies and procedures designed to prohibit discrimination in the workplace.

The fact that I have given you instructions concerning the issue of plaintiff's damages should not be interpreted in any way as an indication that I believe plaintiff should or should not prevail. **Court's**
General Instruction No. 16

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own view, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of the evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts. Your sole interest is to seek the truth from the evidence on the case.

Court's General Instruction No. 17

Upon retiring to the jury room, you should first select one of your number to act as your foreperson. The foreperson will then preside over your deliberations and act as your spokesperson here in court.

You will take the verdict form with you to the jury room. When you reach unanimous agreement as to your verdict, the foreperson should fill in the verdict form, all of you should sign it, and then you should tell the court security officer to inform me that you have reached a verdict.

If, during deliberations, you should desire to communicate with the court, please reduce your message or question to writing and have the foreperson sign the note and include the date and time. Then, pass the note to the courtroom security officer, who will bring it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you in person.

With respect to any message or question that you provide to the court during your deliberations, please be advised of the following rules. First, do not state or specify your numerical division at any time; that is, do not inform the court or even hint at how many among you were or are in favor or against reaching any particular verdict. Also, please be advised that the court cannot supply you with transcripts of any of the trial testimony.

Court's General Instruction No. 18

VERDICT FORM

(Title VII and 42 U.S.C. Section 1981)

1. Do you find by a preponderance of the evidence that plaintiff [Name of Plaintiff]'s [race/sex/national origin/religion] was a motivating factor in defendant [Name of Defendant]'s decision to [terminate/refuse to hire/refuse to promote/demote] plaintiff? Yes _____ No _____

[If your answer is "No," you have found in favor of defendant on plaintiff's Title VII and Section 1981 claims. You should then sign and date this verdict form. If your answer to Question 1 is "Yes," proceed to answer the following questions.]

2. Has defendant [Name of Defendant] proved by a preponderance of the evidence that it would have [terminated/refused to hire/refused to promote/demoted] plaintiff [Name of Plaintiff] regardless of [his/her] [race/sex/national origin/religion]? Yes _____ No _____

[If your answer to Question 2 is "Yes," sign and date this verdict form. If your answer to Question 2 is "No" proceed to Question 3.]

3. We find that plaintiff's lost wages and benefits from [beginning date] through [ending date], to be: \$_____ (State the amount or, if none, write the word "None.")]

4. We find plaintiff's other compensatory damages (emotion pain, suffering, inconvenience or mental anguish) to be: \$_____ (State the amount or, if none, write the word "None.")]

5. Do you find by a preponderance of the evidence that defendant [Name of Defendant] acted with malice or reckless indifference to plaintiff [Name of Plaintiff]'s federally protected rights? Yes _____ No _____

[If your answer to Question 5 is "Yes," you should continue to question 6 below. If your answer to Question 5 is "No," the foreperson and all other members of the jury should sign this form and your deliberations are complete.]

6. If you find that plaintiff [Name of Plaintiff] is entitled to a sum for punitive damages, to what amount do you find [he/she] is entitled? \$_____ (State the amount or, if none, write the word "None.")

[The foreperson and all other members of the jury should now sign this form.]

_____(Foreperson)

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Dated: _____